

**REMARKS**

Claims 1-18 are pending in the above-identified application. Claims 1-18 were rejected. With this Amendment, claims 1 and 10 were amended and claims 5 and 14 were cancelled. Accordingly, claims 1-4, 6-13, and 15-18 are at issue.

**I. Rejection of Claims**

Claims 1-4, 6-8, 10-13, and 15-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Tsutsui et al. (U.S. Patent No. 6,314,391). Claims 5 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsutsui et al. in view of Nakashima et al. (U.S. Patent No. 5,708,650). Claims 9 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsutsui et al. in view of Takezawa (U.S. Patent No. 5,392,265). Applicant respectfully traverses these rejections.

Section (c) of 35 U.S.C. 103 provides, “subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” (emphasis added). Tsutsui, et al. is prior art under 35 U.S.C. § 102(e). Additionally, Tsutsui, et al. and the present invention are both assigned to the same person. Therefore, Tsutsui, et al. cannot preclude patentability under 35 U.S.C. § 103, and claims 5 and 14 should be allowable over the cited references.

Claims 1 and 10 have been amended to include the limitations of claims 5 and 14, protection mode of the track on the medium is prohibited from rewriting, and claims 5 and 14 have been cancelled. Applicant respectfully submits that the rejections have been overcome and

Response to December 21, 2004 Office Action

Application No. 09/695,623

Page 8

therefore claims 1 and 10, and all claims that depend from claims 1 and 10, are allowable over Tsutsui et al. Thus, Applicant respectfully requests withdrawal of this rejection.

**II. Conclusion**

In view of the above amendments and remarks, Applicant submits that all claims are clearly allowable over the cited prior art, and respectfully requests early and favorable notification to that effect.

Respectfully submitted,

Dated: April 21, 2005

By:   
Marina N. Saito  
Registration No. 42,121  
SONNENSCHEIN NATH & ROSENTHAL LLP  
P.O. Box 061080  
Wacker Drive Station, Sears Tower  
Chicago, Illinois 60606-1080  
(312) 876-8000

11821612\V-4